

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition No.:** 06-005-15-1-5-00300-15  
**Petitioner:** Christopher L. Winters  
**Respondent:** Boone County Assessor  
**Parcel No.:** 003-04440-04  
**Assessment Year:** 2015

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. Petitioner initiated this appeal with the Boone County Property Tax Assessment Board of Appeals (“PTABOA”) by filing a Form 130. On October 28, 2015, the PTABOA issued its Notification of Final Assessment Determination. Petitioner then timely filed a Form 131 petition on December 3, 2015, with the Board.
2. Petitioner elected to have his appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. On March 15, 2017, the Board’s administrative law judge (“ALJ”), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the property.
4. The following people testified under oath:<sup>1</sup>
  - Jane A. Wood, Boone County Deputy Assessor,
  - Janis Wilson, Government Utilities Technology Services.

**Facts**

5. The property under appeal is a single-family residence located at 7936 Cheval Rue Court in Zionsville.
6. The PTABOA determined the following values:  
  
Land: \$102,600      Improvements: \$789,900      Total: \$892,500

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<sup>1</sup> Attorney Brian Cusimano appeared on behalf of Petitioner.

7. Petitioner requested the following values:

Land: \$102,600      Improvements: \$747,400      Total: \$850,000

### **Record**

8. The official record for this matter is made up of the following:

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit P1:	Residential appraisal report dated February 26, 2015,
Respondent Exhibit 1:	Boone County appeal worksheet,
Respondent Exhibit 2:	Petition for Review of Assessment by Local Assessing Official – Property Tax Assessment Board of Appeals – Form 130,
Respondent Exhibit 3:	Petitioner’s residential appraisal report dated February 26, 2015,
Respondent Exhibit 4:	2015 subject property record card (“PRC”),
Respondent Exhibit 4A:	Four photographs of subject property,
Respondent Exhibit 5:	Notice of Preliminary Hearing on Appeal,
Respondent Exhibit 6:	Joint Report by Taxpayer/Assessor to the PTABOA of Preliminary Informal Meeting – Form 134,
Respondent Exhibit 7:	Notice of Hearing on Petition – Real Property – Form 114,
Respondent Exhibit 8:	Notification of Final Assessment Determination – Form 115,
Respondent Exhibit 9:	Petition for Review of Assessment – Form 131,
Respondent Exhibit 10:	Board’s Notice of Hearing on Petition,
Board Exhibit A:	Form 131 petition,
Board Exhibit B:	Hearing notice,
Board Exhibit C:	Hearing sign-in sheet,

c. These Findings and Conclusions.

### **Burden of Proof**

9. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that his property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*,

694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.

10. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
11. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The assessed value increased from \$850,000 in 2014 to \$892,500 in 2015. The parties agree the increase was not in excess of 5%. Consequently, Petitioner has the burden of proof in this matter.

### **Summary of the Parties’ Contentions**

14. Petitioner’s case:
  - a. Petitioner’s attorney, Brian Cusimano, argued that the property is over-assessed based on an appraisal. Mr. Cusimano submitted the appraisal report prepared by Janet M. Goar, an Indiana licensed appraiser. She certified that she appraised the property and prepared her report in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). She estimated the property’s value at \$850,000 as of February 26, 2015. *Cusimano argument; Pet’r Ex. P1; Resp’t Ex. 3.*
15. Respondent’s case:
  - a. Respondent contends that Petitioner’s appraisal should be given little weight. According to Respondent, two of the comparable properties sold in 2013,

therefore they are not valid in establishing a 2015 market value. In addition, the subject property is a two-story home, while one comparable property is a one-story ranch home with a finished attic and is located in a different subdivision. Given these facts, Respondent contends the assessment is more accurate than Petitioner's appraisal. *Wood testimony; Resp't Ex. 3.*

- b. Respondent's witness contends that the PTABOA accepted Petitioner's appraisal as evidence at the initial hearing, but increased the \$850,000 assessed value by 5% to \$892,500 to account for the "lag in time" for the two 2013 comparable properties. *Wilson testimony; Resp't Ex. 8.*

### Analysis

16. Petitioner established a prima facie case that the assessed value was incorrect. The Board reached this decision for the following reasons:
  - a. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the Department of Local Government Finance's ("DLGF") rules. The DLGF's 2011 Real Property Assessment Manual defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
  - b. Regardless of the type of evidence offered, a party must explain how that evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2015 assessments, the valuation date was March 1, 2015. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
  - c. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479. Here, Petitioner's attorney presented a USPAP compliant appraisal of the subject property prepared by Janet Goar, a licensed appraiser.

Ms. Goar estimated the value at \$850,000 as of February 26, 2015. Thus, Petitioner established a prima facie case that the assessment should be reduced.

- d. Once a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach a petitioner's case, the respondent has the same burden to present probative evidence that the petitioner faced to raise its prima facie case. *Fidelity Fed. Sav. & Loan v. Jennings Co. Ass'r*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- e. Respondent sought to impeach the appraisal by questioning the appraiser's choice of comparable properties in the sales comparison approach. Furthermore, Respondent contends that the appraiser did not make proper adjustments for the two 2013 sales. The appraisal indicates that the market had been stable over the twelve months leading up to the assessment date. It is well within an appraiser's expertise to choose sales she deems most comparable and apply adjustments to value the differences amongst them. Conclusory statements that the appraiser used invalid sales are not sufficient to rebut Petitioner's case. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005).
- f. There is no evidence in the record to indicate that the appraiser used erroneous data. Furthermore, she conducted the appraisal pursuant to USPAP standards and arrived at her opinion using the sales comparison approach and supported it using the cost approach, which are both generally recognized valuation methods. Consequently, the Board finds that the appraisal is sufficient to establish a prima facie case for changing the assessment to \$850,000.

### **Conclusion**

17. Petitioner made a prima facie case for a reduction in the assessed value. Respondent failed to rebut Petitioner's case with substantial evidence. Thus, the Board orders that the 2015 assessment must be changed.

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the Board determines the 2015 assessed value should be changed to \$850,000.

ISSUED: April 18, 2017

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.